Supreme Court, U.S.
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No. 99-202

IN THE

Supreme Court of the United States

ALICE M. SMITH,

Petitioner,

v.

CENTRA BENEFIT SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, CENTRA Benefit Services, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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Rule:

SUP. CT. R. 10 4

STATEMENT OF THE CASE

Petitioner Alice Smith (hereinafter "petitioner" or "Smith") filed this action in the United States District Court for the Southern District of Mississippi, claiming that CENTRA Benefit Services, Inc. (hereinafter "respondent" or "CENTRA") failed to promote her to the position of unit leader because of her race in violation of Title VII of the Civil Rights Act of 1964.[1]

CENTRA ultimately filed its Motion for Summary Judgment, asserting that Smith's claims should be dismissed because: (1) Smith's disparate impact claim regarding the use and administration of the Wonderlic test was not raised in the EEOC Charge she filed prior to commencing this action[2], and therefore the District Court lacked jurisdiction over the claim; and (2) Smith could not establish a claim of disparate treatment regarding her denial of promotion.

The District Court granted CENTRA's Motion for Summary Judgment, dismissing Smith's action in its entirety, based upon: (1) the court's lack of jurisdiction for Smith's failure to exhaust administrative remedies; and (2) Smith's failure to put forth any evidence of CENTRA's discriminatory intent. The United States Court of Appeals for the Fifth Circuit subsequently affirmed the District Court's grant of summary judgment in favor of CENTRA.[3]

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1. Codified at 42 U.S.C. § 2000(e) *et seq.*

2. Petitioner admits that she failed to mention the disparate impact claim in her EEOC Charge of Discrimination. *See* Pet. 13-14.

3. For the complete opinion of the United States Court of Appeals for the Fifth Circuit, *see* Appendix C to Petition, pp. 18-22.

As set forth below, there is no basis for this Court's review of the petitioner's contentions, which have now been disposed of by summary judgment in the District Court and affirmed by the United States Court of Appeals for the Fifth Circuit. Despite the petitioner's allegation that the Fifth Circuit's opinion "is in conflict with the various decisions rendered by other Circuits,"[4] the petitioner fails to establish any clear conflict between the Fifth Circuit's decision and those decisions of other circuits.

STATEMENT OF FACTS

Since petitioner has mischaracterized the facts in the petition, the Court should be made aware of other significant facts which must be considered. Petitioner is a black female who was employed by CENTRA. In October, 1995, Peggy Seale, Operations Manager for CENTRA, made petitioner the temporary unit leader in the Medical Review Department when the prior lead left the company. Petitioner was one of three applicants for the permanent lead position, along with Janice Broocks and Michelle Vinchwater, who are both white. Ms. Seale interviewed all three of the internal candidates for the unit leader position. In January, 1996, Ms. Seale selected Ms. Broocks for the position based on Ms. Broocks' superior leadership skills and experience.[5]

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4. Pet. 24.

5. Specifically, Ms. Broocks' qualifications for the lead position included 1½ years in a lead position in another department at CENTRA. Further, during the interviewing process, Ms. Seale found Ms. Broocks to have excellent communication and good organizational skills. On the other hand, Smith's management experience was limited to the three months Smith served as (Cont'd)

On March 22, 1996, Smith filed her charge with the Equal Employment Opportunity Commission (hereinafter "EEOC") claiming that she believed she was denied the promotion because of her race.[6] Smith did not mention the Wonderlic test in any of the documents that she submitted to the EEOC. On September 25, 1996, the EEOC mailed petitioner a "Right to Sue" letter. On December 27, 1996, petitioner filed a complaint with the District Court setting forth a single claim of racial discrimination.[7] Petitioner subsequently filed an Amended Complaint on April 23, 1997, which included a new claim alleging that CENTRA's use and administration of the Wonderlic test had a disparate impact on black applicants.

REASONS FOR DENYING THE WRIT

I.

THE WRIT SHOULD BE DENIED INASMUCH AS THE FIFTH CIRCUIT'S DECISION DOES NOT GIVE RISE TO A CONFLICT AMONG CIRCUITS.

The Rules of this Court specifically state the criteria that the Court considers when deciding which cases are to come

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temporary lead for CENTRA and a short time in a similar fill-in position she held on a temporary basis at a previous employer. Also, Ms. Seale found Smith's performance as temporary lead to be less than adequate, and also found her communication skills weak during her interview.

6. *See* Appendix D to Petition, pp. 23-24.

7. There was also no mention of the Wonderlic test in the Complaint.

before it for review. The first consideration, on which the petitioner relies, is that "a United States Court of Appeal has entered a decision in conflict with the decision of another United States Court of Appeal on the same important matter." SUP. CT. R. 10. Despite the petitioner's allegation that the Fifth Circuit's opinion conflicts with those decisions rendered by other circuits, the petitioner fails to establish any clear conflict between the Fifth Circuit's decision and those decisions of other circuits regarding the two matters that are in issue.

As to her disparate impact claim, petitioner cites decisions from other circuits that supposedly would liberally construe petitioner's attempt at exhausting her administrative remedies. *See Lattimore v. Polaroid Corp.*, 99 F.3d 456 (1st Cir. 1996); *Price v. Southwestern Bell Tel. Co.*, 687 F.2d 74 (5th Cir. 1982); *Joslin Dry Goods Co. v. Equal Employment Opportunity Comm'n*, 483 F.2d 178 (10th Cir. 1973). However, in the present case, the Fifth Circuit Court of Appeals did not reject these decisions. Rather, the Fifth Circuit correctly held that petitioner failed to seek *any* administrative remedy from the EEOC regarding the alleged disparate impact of an employment practice of CENTRA. It is well settled law among all Courts of Appeals that a court has no jurisdiction to consider a Title VII claim where the plaintiff has failed to exhaust administrative remedies. Therefore, no conflict among circuits exists on this particular matter.

The petitioner also cites to ***one*** Eighth Circuit decision in support of her disparate treatment claim that is allegedly "in conflict" with the Fifth Circuit's decision below. Once again, petitioner fails to establish a conflict here, as the case

is easily distinguishable on its facts.[8] This single Eighth Circuit decision, when compared with the Fifth Circuit's decision in this case, does not register as a conflict among the circuits worthy of the Supreme Court's review.

II.

THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT AS TO PETITIONER'S DISPARATE IMPACT CLAIM FOR LACK OF JURISDICTION, DUE TO PETITIONER'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES AND THE LACK OF A REASONABLE RELATION TO HER DISPARATE TREATMENT CLAIM.

A plaintiff must file a discrimination charge with the EEOC and receive a right to sue letter before bringing a civil

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8. Petitioner solely cites *Edwards v. United States Postal Serv.*, 909 F.2d 320 (8th Cir. 1990). In *Edwards*, the Eighth Circuit Court of Appeals did not require the plaintiff to put forth evidence of her employer's discriminatory intent, as was true in this case. Instead, the court presumed pretext due to the employer's extreme actions in overlooking plaintiff for a promotion. For example, after the three top male candidates for a clerk position expressed that they were not interested in the position, the Postmaster skipped over the female plaintiff, who was fourth in priority, and instead chose a male part-time employee with no prior clerking experience. Further, during administrative investigations and EEOC hearings, the Postmaster testified both that plaintiff was "an excellent employee" and that she was "denied . . . the clerk position because her work performance needed improvement." *Edwards*, 909 F.2d at 322. These extreme facts render *Edwards* and the case at bar distinguishable; therefore *Edwards* does not apply in this situation and these decisions do not conflict on this matter.

lawsuit under Title VII, and "[i]t is well settled that courts have no jurisdiction to consider Title VII claims as to which the aggrieved party has not exhausted administrative remedies." *Nat'l Ass'n of Gov't Employees v. Pub. Serv. Bd. of San Antonio*, 40 F.3d 698, 711 (5th Cir. 1994). The scope of the judicial complaint is generally limited to the scope of the EEOC investigation. *Fellows v. Universal Restaurants, Inc.*, 701 F.2d 447, 450 (5th Cir. 1983). The petitioner "concedes that no mention was made of the Wonderlic test in her EEOC Charge." (Pet. 13-14).[9] Petitioner's failure to assert this claim in her EEOC charge precludes her from proceeding on her Wonderlic claim before the Court.

Not only is petitioner's Wonderlic claim absent from the EEOC charge, it is also not even remotely related to her disparate treatment claim. For the Court to have a basis for jurisdiction, the allegations in the Complaint must at a minimum encompass allegations "reasonably related" to those contained in the EEOC charge. *Nat'l Ass'n of Gov't Employees*, 40 F.3d at 711. The distinct nature of the two claims petitioner has alleged in her Amended Complaint is amply demonstrated by the differing elements required to establish them and the defense required of respondent.[10]

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9. Petitioner's claim that respondent's use of the Wonderlic test has a disparate impact appears for the first time in her Amended Complaint. Neither petitioner's EEOC charge nor any other communications by her to the EEOC make any reference to the Wonderlic test.

10. Proving a Wonderlic claim involves the production and review of statistical evidence regarding the impact of the use of Wonderlic for promotions. *Anderson v. Douglas & Lomosan Co.*, 26 F.3d 1277, 1282 (5th Cir. 1994). Once a plaintiff makes this *prima*

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These distinctly different evidentiary considerations demonstrate the equally different nature of petitioner's promotion claim and her Wonderlic claim.

Further, in considering whether claims are reasonably related, the Court must consider what scope of EEOC investigation could reasonably be expected to grow from the EEOC charge. The focus of this inquiry is on the information provided by the plaintiff, not the logic followed by the EEOC in responding to the charge. Petitioner states that the EEOC "became aware of respondent's use of the Wonderlic test,"[11] and claims that the EEOC did not properly investigate the issue. Yet, at no time did petitioner ever ask the EEOC to do so. Petitioner's EEOC charge gives no notice of a disparate impact claim regarding the Wonderlic test which would alert the EEOC to investigate and inquire about this practice.

In sum, the Fifth Circuit Court of Appeals correctly held that there was no jurisdiction to hear petitioner's disparate impact claim since it was not reasonably related to the disparate treatment claim, and therefore petitioner failed to exhaust administrative remedies regarding the disparate treatment claim. In so holding, the Fifth Circuit correctly

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facie case, the defendant must defend the practice by showing that it is reasonably justified by legitimate business purposes. *Wards Cove Packaging Co. v. Antonio*, 490 U.S. 642, 659, 109 S. Ct. 2115, 2126 (1989). In contrast, petitioner's disparate treatment claim involves a focus on the specific qualifications of plaintiff regarding the position she sought vis a vis the qualifications of other applicants. *Grimes v. Texas Dept. of Mental Health*, 102 F.3d 137, 143 (5th Cir. 1996).

11. Pet. 14.

applied properly stated rules of law, and therefore this decision is not in conflict with other circuits.

III.

THE FIFTH CIRCUIT CORRECTLY HELD THAT PETITIONER'S DISPARATE TREATMENT CLAIM FAILED BECAUSE PETITIONER FAILED TO PRODUCE ANY EVIDENCE INDICATING THAT RESPONDENT WAS MOTIVATED BY DISCRIMINATORY INTENT.

As for her disparate treatment claim, petitioner was first required to establish a *prima facie* case of disparate treatment.[12] The District Court first found that Summary Judgment was not appropriate as to the plaintiff's *prima facie* case.[13] Pursuant to the controlling *McDonnell Douglas* burden-shifting framework, the burden of production then shifted to respondent to articulate a legitimate, nondiscriminatory reason for the challenged employment action. *McDonnell Douglas Corp.*, 411 U.S. at 882. The undisputed facts demonstrate that CENTRA based its

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12. A *prima facie* showing requires that petitioner demonstrate that: (1) she belongs to a protected group; (2) she was qualified for, and applied for, a promotion; (3) she was considered for and denied the promotion; and (4) other employees of similar qualifications not members of the protected group were promoted at the time her request was denied. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1972).

13. However, in so finding, the District Court gave petitioner the benefit of the doubt and inferred a genuine issue of material fact with regard to whether petitioner and Broocks were similarly qualified.

decision to select Ms. Broocks on the basis of her superior leadership skills and experience,[14] which dropped the inference of intentional discrimination raised by petitioner's *prima facie* showing from the case. At this point, the petitioner maintained the ultimate burden of presenting proof of respondent's discriminatory intent. *Grimes v. Texas Dept. of Mental Health*, 102 F.3d 137, 143 (5th Cir. 1996). However, petitioner has failed to produce any evidence whatsoever of intentional discrimination by respondent.

Further, petitioner could identify no statements or other actions on the part of anyone at CENTRA that indicated discrimination. Absent direct evidence of discrimination, petitioner must offer evidence which would allow a rational fact finder to make a reasonable inference that race was a determinative reason for the decision to promote Ms. Broocks instead of her. *Grimes*, 102 F.3d at 143. No such evidence exists in this case. Seale's decisions were based solely on Broocks' qualifications relative to petitioner's and her assessment of petitioner's performance as temporary lead. The Fifth Circuit correctly held that petitioner failed to produce evidence indicating discriminatory intent on the part of CENTRA. In affirming the District Court, the Fifth Circuit properly applied the relevant rules of law, and therefore no conflict among the circuits exists on this issue.

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14. CENTRA selected Ms. Broocks for the Unit Lead because Peggy Seale, the manager responsible for the hiring decision, sought the person with the strongest ability to perform the leadership role inherent in the lead position. For more specific information regarding Broocks' qualifications relative to petitioner's, *see supra* footnote 5 and accompanying text.

CONCLUSION

The petition for writ of certiorari should be denied inasmuch as the decision rendered by the Court of Appeals for the Fifth Circuit does not stand in conflict with any decision rendered by any other Court of Appeals. The Fifth Circuit properly held that it had no jurisdiction to hear petitioner's disparate impact claim since she failed to exhaust administrative remedies prior to filing suit under Title VII. This is well-settled law, and the Fifth Circuit's decision on this matter does not stand in conflict with any other circuit's decision. Further, the Court of Appeals correctly held that petitioner failed to put forth any evidence of discriminatory intent. Petitioner only cites one case allegedly in conflict with the Fifth Circuit's decision, but this case is easily distinguishable, and these decisions certainly do not establish a conflict worthy of this Court's review.

The petition fails to establish any clear conflict between the circuits on the same important matter as was decided by the Fifth Circuit below. The Fifth Circuit correctly applied properly stated rules of law in reaching their decision, and therefore this case does not justify the Supreme Court's review. Simply put, this petition raises no issues that warrant review, and therefore should be denied.

Respectfully submitted,

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